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Supreme Court of the United States

OCTOBER TERM, 1961

No. [redacted] 7

ENGLAND, ET AL., *Appellants*

v.

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS, ET AL., *Appellees*

Appeal from the Three-Judge United States District Court, Eastern District of Louisiana

STATEMENT AS TO JURISDICTION

J. MINOS SIMON
301 Congress Street
Lafayette, Louisiana

RUSSELL MORTON BROWN
Suite 500, Bowen Building
815 Fifteenth Street, N.W.
Washington 5, D. C.
Attorneys for Appellants

Of Counsel
BROWN, GOODPASTURE AND GAUGHAN
815 Fifteenth Street, N.W.
Washington 5, D. C.;

FLOYD J. REED
919 Maison Blanche Building
New Orleans, Louisiana

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INDEX

	Page
STATEMENT AS TO JURISDICTION	1
OPINION BELOW	2
JURISDICTION	2
STATUTE INVOLVED	3
QUESTION PRESENTED	3
STATEMENT OF THE CASE	3-5
THE QUESTION PRESENTED IS SUBSTANTIAL	6-8
CONCLUSION	8
AFFIDAVIT OF SERVICE	9

APPENDIX

A — Reasons for and Judgment of Three-Judge District Court 1a-3a

AUTHORITIES CITED

CASES:

Clark v. *Poor*, 274 U.S. 554 (1927) 3

England v. *Louisiana State Board of Medical Examiners*, 259 F. 2d 626 (5th Cir. 1958) *reh. den.* 263 F. 2d 661 (5th Cir. 1959) *cert. den.* 359 U.S. 1012 (1959) 4

England v. *La. State Board of M. E.*, 180 F. Supp. 121 (E. D. La. 1960) 5, 7

England v. *Louisiana State Board of Medical Examiners*, E.D. La., Civil Action No. 9292, May 31, 1961 ..... 6, 1a-3a

England v. *Louisiana State Board of Medical Examiners*, 126 So. 2d 51, *reh. den.* Jan. 30, 1961, *cert. den.* Sup. Ct. La., No. 45,509, Feb. 15, 1961 .. 5

Fallbrook Irrig. Dist. v. *Bradley*, 164 U.S. 112 (1896) 7, 8

Green v. *Teets*, 244 F. 2d 401 (9th Cir. 1957) 7, 8

Government & Civic Employees O. C., CIO v. *Windsor*, 353 U.S. 364 (1957) 3, 7

	Page
Harrison v. *N.A.A.C.P.*, 360 U.S. 167 (1957)	3, 6
Larson v. *South Dakota*, 278 U.S. 429 (1929)	7, 8
Leiter Minerals, Inc. v. *United States*, 352 U.S. 220 (1957)	7
Louisiana Power & Light Co. v. *Thibodeaux*, 360 U.S. 25 (1959)	6, 7
Meridian v. *Southern Bell Tel. & Tel. Co.*, 358 U.S. 639 (1959)	7
Railroad Com. v. *Pullman Co.*, 312 U.S. 496 (1941)	7
Rorick v. *Everglades Drainage Dist.*, 307 U.S. 208 (1939)	3
STATUTES, ETC.:	
Fourteenth Amendment, United States Constitution	2
Louisiana Rev. Stat. of 1950, 37:1261-90	2, 3, 4, 5
28 U.S.C. 1253	2
28 U.S.C. 2201	2, 4
28 U.S.C. 2202	2, 4
28 U.S.C. 2281	4
28 U.S.C. 2284	4
42 U.S.C. 1981	2, 3, 4, 7
42 U.S.C. 1983	2, 3, 4, 7

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STATEMENT AS TO JURISDICTION

The appellants, pursuant to United States Supreme Court Rules 13(2) and 15, file this statement of the basis upon which the Supreme Court of the United States has jurisdiction on direct appeal to review the judgment of the three-judge United States District Court, Eastern District of Louisiana, in dismissing

appellants' complaint, and should exercise such jurisdiction in this case.

Opinion Below

The reasons and judgment of said District Court were entered on May 31, 1961. A copy of the opinion is attached hereto as Appendix A, *infra*, p. 1a. It has not been reported. No separate findings of fact and conclusions of law were made.

Jurisdiction

The appeal herein is from a final judgment entered by the said District Court, dismissing the appellants' complaint which prayed injunction against execution of Louisiana Revised Statutes, Title 37, Sections 1261-90 (herein called Medical Practice Act), and administrative regulations issued thereunder by the Louisiana State Board of Medical Examiners. The complaint alleged that the statute and regulations deny their privileges and immunities as citizens of the United States, due process and equal protection of the laws, guaranteed by the Fourteenth Amendment to the United States Constitution. The complaint further alleged violation of the federal Civil Rights Act, Rev. Stat. §§ 1977 and 1979 (1875), 42 U.S.C. 1981 and 1983, and asked for declaratory relief (28 U.S.C. 2201, 2202).

The action was dismissed by final order dated May 31, 1961. Notice of appeal was filed June 30, 1961.

This Court has jurisdiction on direct appeal to review said judgment below under 28 U.S.C. 1253 and 2101(b), and the following decisions sustain that jurisdiction:

Government and Civic Employees Organizing Committee, CIO, v. *Windsor,* 353 U.S. 364 (1957)

Clark v. *Poor,* 274 U.S. 554 (1927)

Harrison v. *N.A.A.C.P.,* 360 U.S. 167 (1959)

Rorick v. *Everglades Drainage Dist.,* 307 U.S. 208 (1939)

Statute Involved

There is no statute in issue.

Question Presented

Where a federal district court, considering a state statute alleged to be invalid under the United States Constitution, applies the doctrine of abstention, remitting plaintiffs to the state court and retaining jurisdiction, does the state court decision rendered bar further consideration of the issues by the federal district court?

Statement of the Case

Plaintiffs, appellants herein, a number of chiropractors, brought this action in the United States District Court for the Eastern District of Louisiana, claiming that:

(a) The Medical Practice Act deprives complainants of their civil rights and privileges and immunities, without due process of law under the Constitution and laws of the United States because it imposes requirements for license to practice which

have no reasonable relation to the practice of chiropractic, e.g., Section 1271 provides applicants must pass an examination in surgery, materia medica, obstetrics and gynecology, which chiropractors never use in their profession.

(b) The Louisiana State Board of Medical Examiners administers the act with the deliberate intention of unlawfully depriving appellants of their rights, privileges and immunities under the Constitution and laws of the United States. For example, the Medical Practice Act, i.e., Sec. 1271, requires only that applicant possess "a diploma from a college in good standing of any sect teaching medicine or the healing art." However, the Board requires a diploma from a medical school approved by the American Medical Association.

On the basis of the foregoing complaint, appellants sought the convening of a three-judge court, praying injunctive relief under 28 U.S.C. 2281 (and 2284) invoking the federal Civil Rights Act, Rev. Stat. §§ 1977 and 1979 (1875), 42 U.S.C. 1981 (and 1983), and praying a declaratory judgment under 28 U.S.C. 2201 and 2202.

The District Court dismissed the action on motion of defendants, holding "Since no serious (sic) federal question, not heretofore decided by the Supreme Court of the United States is presented, in the absence of diversity of citizenship, this court is without jurisdiction."

On appeal, the Fifth Circuit reversed and remanded the cause September 9, 1958, for further proceedings. January 23, 1959, the Fifth Circuit denied a rehearing, holding the complaint set forth grounds for relief. *England* v. *Louisiana State Board of Medical Examiners*, 259 F. 2d 626 (5th Cir. 1958), *reh. den.*

263 F. 2d 661 (5th Cir. 1959), *cert. den.*, 359 U.S. 1012. (1959).

A three-judge federal District Court convened and heard argument on plaintiffs' motion for summary judgment, supported by voluminous uncontroverted affidavits, exhibits and appropriate supporting data. On January 29, 1960, that Court applied the doctrine of abstention, remitting plaintiffs to action in the State courts to secure a current decision on constitutionality of the statute in question, and its administration, meanwhile retaining jurisdiction of the cause. *England* v. *La. State Board of M. E.*, 180 F. Supp. 121 (E.D., La. 1960)

Plaintiffs immediately sued in the state courts for injunction against enforcement of the Medical Practice Act on the same grounds averred in the federal action. Adverse decision in the trial court was affirmed on appeal (*England* v. *Louisiana State Board of Medical Examiners*, —— La. ——, 126 So. 2d 51, *reh. den.* Jan. 30, 1961) and the Supreme Court of Louisiana declined to review, stating "The judgment of the Court of Appeals is correct." *Cert. den.* La. Sup. Ct. —— La. ——, —— So. 2d ——.

(These opinions have not yet been reported. La. Supreme Court, Docket No. 45,509, Feb. 15, 1961.)

Appellants then moved the three-judge federal District Court to vacate its order of abstention and proceed with the cause. Defendants moved to dismiss the action, which motion was granted by the District Court on May 31, 1961, holding, "since the courts of Louisiana have passed on all issues raised, including the claims of deprivation under the Federal Constitution, this court, having no power to review those proceedings, must dismiss the complaint. The proper

remedy was by appeal to the Supreme Court of the United States." *England* v. *Louisiana State Board of Medical Examiners,* Civil Action No. 9292, E.D. La., May 31, 1961, opinion printed in Appendix A, *infra,* p. 1a. Not yet reported.

This is the decision from which this appeal is taken.

The Question Presented Is Substantial

The crucial question presented is one of federal procedure: whether a federal district court, having remitted the parties to state tribunals to secure a current interpretation of a state statute challenged as violating the United States Constitution, is thereafter precluded from exercising its retained jurisdiction to adjudicate the federal questions in the case because the highest state court has passed on the issues raised.

Appellants brought the state court action in compliance with the District Court stay order, reasonably believing that the federal questions would thereafter be fully considered under the retained jurisdiction in the District Court.

If indeed the question is to be answered in the affirmative, then plaintiffs are denied access to the federal forum provided by the federal statute. This Court has indicated the desirability of remission and the policy involved. *Harrison* v. *N.A.A.C.P.*, 360 U.S. 167 (1959). In no case has it indicated an intent to diminish the statutory remedy, or limit the ambit of decision. In fact, this Court has expressly rejected any suggestion that remission constitutes abdication of jurisdiction by the federal courts, or "abnegation of judicial duty". *Louisiana Power & Light Co.* v. *Thibodeaux*, 360 U.S. 25, 29 (1959). In this *Thibodeaux* case it was plainly said for the Court

by Mr. Justice Frankfurter that the federal court decision was only postponed, and the questions would be eventually decided by the District Court.

To the same effect are *Railroad Com.* v. *Pullman Co.*, 312 U.S. 496 (1941); *Meridian* v. *Southern Bell Tel. & Tel. Co.*, 358 U.S. 639 (1959); *Government & Civic Employees, O. C., C.I.O.* v. *Windsor*, 353 U.S. 364 (1957); *Leiter Minerals, Inc.* v. *United States*, 352 U.S. 220 (1957).

Even if the contrary be held, it is unthinkable that important federal constitutional and legal rights be finally decided by state courts in such manner as to bar decision by the federal court, when the plaintiffs sought the state court decision at the direction of, and only as an aid to, the federal tribunal, which held it would "be proper for the State to have the first opportunity to reinterpret and reapply and limit" the statute. *England* v. *Louisiana State Board of Medical Examiners*, 180 F. Supp. 121 (E.D. La., 1960).

The supervisory power of the United States Supreme Court is here invoked to prevent lower federal courts, called upon to vindicate federal constitutional rights, from "abnegation of judicial duty" by remitting plaintiff's to state courts and thereafter declining to adjudicate the claims independently. Such action nullifies the federal statute and the obligation imposed by the Congress to protect such federal rights. Civil Rights Act, Rev. Stat. §§ 1977 and 1979 (1875), 42 U.S.C., 1981 and 1983.

Such action contravenes the directions of this Court in the *Thibodeaux Case, supra.*

Any appeal from the state court to this Court, as suggested by the District Court, would have been

premature because the original case was still pending in the District Court under the retained jurisdiction.

It seems plain that correct procedure would require the federal court, after the state court proceedings are complete, to proceed to judgment on the merits. *Fallbrook Irrig. Dist.* v. *Bradley*, 164 U.S. 112 (1896); *Larson* v. *South Dakota*, 278 U.S. 429 (1929); *Green* v. *Teets*, 244 F. 2d 401 (9th Cir. 1957).

The matter is of particular general importance at this time when civil rights are developing on a broad front and the federal courts stand as the principal forum willing and able to support those rights.

Conclusion

The judgment should be reversed with directions that the three-judge District Court hear and decide the questions raised by the pleadings.

Respectfully submitted,

J. Minos Simon
301 Congress Street
Lafayette, Louisiana

Russell Morton Brown
Suite 500, Bowen Building
815 Fifteenth Street, N.W.
Washington 5, D. C.
Attorneys for Appellants

Of Counsel
Brown, Goodpasture and Gaughan
815 Fifteenth Street, N.W.
Washington 5, D. C.

Proof of Service

I, Russell Morton Brown, one of the attorneys for appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 19th day of September, 1961, copies of the foregoing jurisdictional statement to the Supreme Court of the United States were served on the appellees and intervenors herein by air-mailing same in duly addressed envelopes with postage prepaid to their attorneys of record, as follows:

To Adams & Reese, and Robert LeCorgne, Jr., 847 National Bank of Commerce Building, New Orleans, Louisiana, attorneys for Louisiana State Board of Medical Examiners; and Phelps, Dunbar, Marks, Claverie and Sims, Hibernia Bank Building, New Orleans, Louisiana, attorneys for the Intervenors, Louisiana Medical Society.

Russell Morton Brown

RUSSELL MORTON BROWN
Attorney for Appellants
Suite 500 Bowen Building
815 Fifteenth Street, N.W.
Washington 5, D. C.